

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALYSSA S. A. M.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner Of Social Security,

Defendant.

NO. 2:22-CV-0077-TOR

ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are the parties’ cross-motions for summary judgment (ECF Nos. 10, 11). These matters were submitted for consideration without oral argument. The Court has reviewed the administrative record, and is fully informed. For the reasons discussed below, Plaintiff’s Motion for Summary Judgment (ECF No. 10) is **DENIED**, and Defendant’s Motion for Summary Judgment (EFC No. 11) is **GRANTED**.

JURISDICTION

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

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JUDGMENT ~ 1

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited: The Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158–59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means relevant evidence that "a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether this standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an ALJ's decision on account of an error that is harmless." *Id.* An "error is harmless where it is 'inconsequential to the ultimate nondisability determination.'" *Id.* at

1 1115 (citation omitted). The party appealing the ALJ’s decision generally bears
2 the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396,
3 409–10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered “disabled” within
6 the meaning of the Social Security Act. First, the claimant must be unable “to
7 engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of not less than 12
10 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
11 impairment must be “of such severity that [he or she] is not only unable to do [his
12 or her] previous work[,] but cannot, considering [his or her] age, education, and
13 work experience, engage in any other kind of substantial gainful work which exists
14 in the national economy.” 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner has established a five-step sequential analysis to
16 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
17 416.920(a)(4)(i)–(v). At step one, the Commissioner considers the claimant’s
18 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in
19 “substantial gainful activity,” the Commissioner must find that the claimant is not
20 disabled. 20 C.F.R. § 416.920(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
4 "any impairment or combination of impairments which significantly limits [his or
5 her] physical or mental ability to do basic work activities," the analysis proceeds to
6 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
7 this severity threshold, however, the Commissioner must find that the claimant is
8 not disabled. *Id.*

9 At step three, the Commissioner compares the claimant's impairment to
10 several impairments recognized by the Commissioner to be so severe as to
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §
12 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant's impairment does meet or exceed the severity
16 of the enumerated impairments, the Commissioner must pause to assess the
17 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
18 defined generally as the claimant's ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations (20 C.F.R. §
20 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing other work in the national economy.
9 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
10 must also consider vocational factors such as the claimant's age, education and
11 work experience. *Id.* If the claimant is capable of adjusting to other work, the
12 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
13 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
14 analysis concludes with a finding that the claimant is disabled and is therefore
15 entitled to benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
19 capable of performing other work; and (2) such work "exists in significant
20

1 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 **ALJ’S FINDINGS**

4 On March 7, 2019, Plaintiff filed an application for Title XVI supplemental
5 security income benefits, alleging an onset date of April 1, 2004. Tr. 15. The
6 applications were denied initially, Tr. 151-154, and again on reconsideration, Tr.
7 155-157. Plaintiff appeared at a telephonic hearing before an administrative law
8 judge (“ALJ”) on March 19, 2021. Tr. 35-65. The alleged onset date was
9 amended to March 7, 2019 at the time of the hearing. ECF No. 10 at 2. The ALJ
10 denied Plaintiff’s claim on April 21, 2021. Tr. 15-28.

11 At step one of the sequential evaluation analysis, the ALJ found Plaintiff
12 engaged in substantial gainful activity during the following periods: May 2020,
13 through February 2021. Tr. 17. However, the ALJ found there has been a
14 continuous 12-month period(s) during which Plaintiff did not engage in substantial
15 gainful activity. *Id.* At step two, the ALJ found Plaintiff had the following severe
16 impairments: attention-deficit hyperactivity disorder (“ADHD”), borderline
17 intellectual functioning, depressive disorder with panic attacks, post-traumatic
18 stress disorder (“PTSD”), and obesity. *Id.* At step three, the ALJ found Plaintiff
19 did not have an impairment or combination of impairments that meets or medically
20 equals the severity of a listed impairment. Tr. 18-19. The ALJ then found Plaintiff

1 had a residual functional capacity to perform medium work with the following
2 limitations:

3 [Plaintiff] can occasionally climb ladders, ropes, and scaffolds. She
4 can occasionally stoop, kneel, crouch, and crawl. She should avoid
5 exposure to irritants such as fumes, odors, dusts, gases, and poorly
6 ventilated areas and exposure to industrial chemicals. She can have
7 no exposure to unprotected heights. She should have low stress work,
8 meaning no production pace/conveyor belt work, a predictable work
environment, occasional simple workplace changes, work that would
not involve large groups of the public. Work interacting with one or
two members of the public is ok. She can have brief and superficial
interaction with co-workers and occasional interaction with
supervisors.

9 Tr. 22.

10 At step four, the ALJ found Plaintiff capable of performing past relevant
11 work as a Companion. Tr. 26. In the alternative, at step five, the ALJ found that,
12 considering Plaintiff's age, education, work experience, and RFC, there were other
13 jobs that existed in the significant numbers in the national economy that Plaintiff
14 could perform, such as hand packager, garment sorter, and cleaner, housekeeper.
15 Tr. 27-28. The ALJ concluded Plaintiff was not under a disability, as defined in
16 the Social Security Act, from March 7, 2019, the alleged onset date, through April
17 21, 2021, the date of the ALJ's decision. Tr. 28

1 **ISSUES**

- 2 1. Whether the ALJ properly considered Plaintiff's subjective symptom
3 testimony;
4 2. Whether the ALJ properly evaluated Plaintiff's residual functional
5 capacity; and
6 3. Whether the ALJ properly evaluated the vocational expert's testimony.

7 **DISCUSSION**

8 **I. Plaintiff's Symptom Testimony**

9 Plaintiff contends the ALJ did not provide clear and convincing reasons to
10 discount her symptom testimony. ECF No. 10 at 13-15.

11 An ALJ engages in a two-step analysis to determine whether a claimant's
12 subjective symptom testimony can be reasonably accepted as consistent with the
13 objective medical and other evidence in the claimant's record. Social Security
14 Ruling ("SSR") 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine
15 whether there is 'objective medical evidence of an underlying impairment which
16 could reasonably be expected to produce the pain or other symptoms alleged.'" *Molina v. Astrue*, 674 F.3d 1104, 1112 (9th Cir. 2012) (quoting *Vasquez v. Astrue*,
17 572 F.3d 586, 591 (9th Cir. 2009)). "The claimant is not required to show that her
18 impairment 'could reasonably be expected to cause the severity of the symptom
19 she has alleged; she need only show that it could reasonably have caused some
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1 degree of the symptom.” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v.*
2 *Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
7 omitted). General findings are insufficient; rather, the ALJ must identify what
8 symptom claims are being discounted and what evidence undermines these claims.
9 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
10 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
11 explain why he or she discounted claimant’s symptom claims). “The clear and
12 convincing [evidence] standard is the most demanding required in Social Security
13 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
14 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

15 The ALJ is instructed to “consider all of the evidence in an individual’s
16 record,” “to determine how symptoms limit ability to perform work-related
17 activities.” SSR 16-3p, 2016 WL 1119029, at *2. When evaluating the intensity,
18 persistence, and limiting effects of a claimant’s symptoms, the following factors
19 should be considered: (1) daily activities; (2) the location, duration, frequency, and
20 intensity of pain or other symptoms; (3) factors that precipitate and aggravate the

1 symptoms; (4) the type, dosage, effectiveness, and side effects of any medication
2 an individual takes or has taken to alleviate pain or other symptoms; (5) treatment,
3 other than medication, an individual receives or has received for relief of pain or
4 other symptoms; (6) any measures other than treatment an individual uses or has
5 used to relieve pain or other symptoms; and (7) any other factors concerning an
6 individual's functional limitations and restrictions due to pain or other symptoms.
7 *Id.* at *7–8; 20 C.F.R. § 416.929(c)(3).

8 Here, the ALJ found Plaintiff's impairments could reasonably be expected to
9 cause the alleged symptoms. Tr. 23. However, the ALJ found Plaintiff's
10 statements concerning the intensity, persistence, and limiting effects of those
11 symptoms were not entirely consistent with the evidence. *Id.*

12 *1. Objective Medical Evidence*

13 Plaintiff challenges the ALJ's finding that Plaintiff's symptom testimony
14 was not supported by the objective medical evidence. ECF No. 10 at 15-17.

15 Objective medical evidence is a relevant factor, along with the medical
16 source's information about the claimant's pain or other symptoms, in determining
17 the severity of a claimant's symptoms and their disabling effects. 20 C.F.R. §
18 416.929(c)(2). However, an ALJ may not discredit a claimant's symptom
19 testimony and deny benefits solely because the degree of the symptoms alleged is
20 not supported by objective medical evidence. *Id.*

1 First, the ALJ found Plaintiff's symptoms varied, noting Plaintiff's anxiety
2 and depression screenings had heightened scores prior to the relevant period but
3 the scores during the relevant period were not considered to be clinically
4 significant. Tr. 24 (citations to the record omitted). Second, the ALJ found
5 symptom improvement and mood stability with medications and Plaintiff's
6 medical status examinations were largely stable. *Id.* (citations to the record
7 omitted). Third, while Plaintiff stated she had no physical limitations at the
8 hearing, the ALJ nonetheless considered her obesity and found Plaintiff retained a
9 normal gait and station with intact sensation and normal strength and respiratory
10 effort. *Id.* (citations to the record omitted).

11 The ALJ's finding that the objective medical evidence conflicted with the
12 Plaintiff's symptom testimony is supported by substantial evidence.

13 2. *Miscellaneous Challenges*

14 Plaintiff asserts her testimony is consistent with the record where she has
15 been unable to keep a job and is consistent the opinions of Dr. Islam-Zwart and D.
16 Genthe. ECF No. 10 at 13-14. First, Plaintiff acknowledges that the loss of the job
17 was not due to her symptoms. *See* ECF No. 10 at 13 ("Plaintiff indicated that she
18 ultimately quit that job when her hours dropped to five to ten hours per week.").
19 Second, the Court does not weigh the medical opinion evidence where Plaintiff
20 does not challenge the ALJ's the reasons for discounting these medical opinions.

1 It is the ALJ's role to resolve conflicts in the evidence. *Andrews v. Shalala*, 53
2 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's opinion is supported by substantial
3 evidence.

4 Even if this were an error, the ALJ considered other factors. *Vertigan v.*
5 *Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001). The Court notes the ALJ discounted
6 Plaintiff's symptom testimony for reasons Plaintiff does not challenge here,
7 including her improvement with treatment and her ability to work at substantial
8 gainful levels at the time of the hearing. *See* Tr. 23.

9 **II. Steps Four and Five**

10 Plaintiff contends the ALJ erred at step five in finding Plaintiff had the
11 capacity to work as a companion and erred in assessing the vocational expert
12 testimony. ECF No. 10 at 15-16.

13 Relying on vocational expert testimony, the ALJ found Plaintiff could work
14 as a companion as generally performed and as actually performed by Plaintiff, in
15 comparing Plaintiff's RFC with the physical and mental demands of the work. Tr.
16 27. In the alternative, the vocational expert testified Plaintiff could perform the
17 occupations of hand packager, garment sorter, and cleaner, housekeeper
18 considering her age, education, work experience, and RFC. Tr. 27-28.

19 Plaintiff asserts the ALJ erred in not crediting the vocational expert's
20 testimony regarding a hypothetical where a worker could not maintain competitive

1 employment if the worker missed in excess of two days per month. ECF No. 10 at
2 15-16. This hypothetical relies on Plaintiff's report of absenteeism from a job
3 where she remained employed – the ALJ did not account for the absenteeism as the
4 ALJ found that Plaintiff was working at a job at substantial gainful activity levels
5 and reflected ongoing functionality. Tr. 27-28. Plaintiff's challenge is a
6 restatement that the ALJ should have credited her symptom testimony in the RFC,
7 which the ALJ properly discounted as discussed *supra*. The Court finds the ALJ
8 did not err.

9 CONCLUSION

10 Having reviewed the record and the ALJ's findings, this Court concludes the
11 ALJ's decision is supported by substantial evidence and free of harmful legal error.

12 ACCORDINGLY, IT IS HEREBY ORDERED:

- 13 1. Plaintiffs Motion for Summary Judgment (ECF No. 10) is **DENIED**.
- 14 2. Defendant's Motion for Summary Judgment (ECF No. 11) is
15 **GRANTED**.

16 The District Court Executive is directed to enter this Order and Judgment
17 accordingly, furnish copies to counsel, and **CLOSE** the file.

18 DATED October 5, 2022.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge